SUPREME COURT, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-550

RONALD A. LEE,
Petitioner,

VERSUS

STATE OF OKLAHOMA,
Respondent.

BRIEF OPPOSING CERTIORARI

LARRY DERRYBERRY
Attorney General of Oklahoma
112 State Capitol Building
Oklahoma City, Oklahoma 73105

MARVIN C. EMERSON
First Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105

Counsel for Respondent

of Counsel:

KAY KAREN KENNEDY
Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105

January, 1974

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY. PH. 235-0030

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STATEMENT OF THE CASE

Petitioner, Ronald A. Lee, was charged, tried and convicted in the District Court of Comanche County, State of Oklahoma, Case No. CRF-72-356, for the offense of Illegal Delivery of Marijuana. His punishment was assessed at seven (7) years imprisonment and a fine of Four Thousand Dollars ($4,000.00). Also, petitioner, Ronald A. Lee, was charged, tried and convicted in the District Court of Comanche County, State of Oklahoma, Case No. CRF-72-328, for the offense of Unlawful Delivery of Marijuana. Punishment was assessed at five (5) years imprisonment.

From said judgments and sentences, petitioner perfected appeals to the Oklahoma Court of Criminal Appeals, Cases No. A-18,091 and A-18,092, respectively. The Oklahoma Court of Criminal Appeals affirmed petitioner's con-

victions. Petitions for Rehearing were denied, therefore, rendering the State Court's determinations final.

The facts of the case set forth in petitioner's Petition for Writ of Certiorari will be accepted as true and correct with the following additions.

On May 5, 1972, petitioner lived at 650 Grand Avenue, Lawton, Oklahoma. At this time, petitioner was enlisted in the United States Army. Petitioner was stationed at Ft. Sill, Oklahoma.

Respondent further submits that neither the District Court of Comanche County nor the Oklahoma Court of Criminal Appeals made a finding that the concerted activity between the Lawton Police Department and Larry Hugh Smith, Provost Marshal Investigator for the C.I.D. Office, Ft. Sill Military Reservation, constituted a violation of the laws of the United States of America, to-wit: 18 U.S.C., §1385.

ARGUMENT AND AUTHORITIES

Petitioner seeks to void two State criminal convictions by challenging the composition of the jury and the admissibility of testimony offered by Larry Hugh Smith. Respondent respectfully submits that the Petition does not warrant review by this Court for the reasons stated below.

Petitioner contends that 38 O.S. 1971, §24 creates a system of jury selection which excludes a definable class of persons from a jury panel. Title 38 O.S. 1971, §24 provided that qualified jurors would be selected from the tax list of the County Assessor's office. The tax list contained names

of all persons who listed both real and personal property for purposes of taxation. Petitioner contends that there is a definable class of persons, numbering approximately nine thousand, who were excluded from the jury list due to this statute. Respondent respectfully submits that this Court has held that tax rolls may be used as a source for the jury list. The use of tax rolls in this manner does not violate the Fourteenth Amendment. See *Brown* v. *Allen*, 344 U.S. 443, 73 S.Ct. 397, 97 L.Ed. 469 (1953). See also *Roach* v. *Mauldin*, 391 F.2d 907 (5th Cir. 1968), *cert. denied* 393 U.S. 1095, 89 S.Ct. 884, 21 L.Ed.2d 786 (1969).

Therefore, respondent respectfully submits that this Court has previously denied certiorari or relief on the merits to other parties in substantially identical circumstances who were also challenging the use of tax rolls for formulating jury lists.

Petitioner's second issue questions the admissibility of testimony offered by a military agent who assisted civil law enforcement officers. Petitioner maintains that the military agent was acting as a posse comitatus, in violation of 18 U.S.C. §1385, and therefore, his testimony was inadmissible.

Respondent respectfully submits that this issue does not raise a federal question. Petitioner does not allege that he was the subject of any unlawful invasion of constitutional rights. Petitioner does not show that the evidence complained of operated to deprive him of the essentials of due process. Respondent further submits that 18 U.S.C. §1385 speaks only of the person who has violated this command and not of the person arrested thereby. Respondent

further submits that Larry Hugh Smith was an uncompensated informant and assumed no greater authority than that of a private citizen. Therefore, respondent respectfully submits that petitioner's contention does not allege deprivation of any guaranteed constitutional right. Thus, the Petition fails to raise a federal question.

It is respectfully submitted that the Oklahoma Court of Criminal Appeals, after considering the records of the State trial court, correctly interpreted the existing case law in finding that the petitioner was not denied any constitutional right. The court correctly found that the evidence regarding the purchase of marijuana was admissible. Furthermore, it is respectfully submitted that the Oklahoma Court of Criminal Appeals correctly held that the jury was properly constituted and impaneled.

CONCLUSION

THEREFORE, premises considered, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LARRY DERRYBERRY
Attorney General of Oklahoma
112 State Capitol Building
Oklahoma City, Oklahoma 73105

MARVIN C. EMERSON
First Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105

Counsel for Respondent

of Counsel:

KAY KAREN KENNEDY
Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105

January, 1974

CERTIFICATE OF SERVICE

This is to certify that I mailed a true copy of the foregoing instrument to which this certificate is attached, to the following named counsel of record this ..... day of January, 1974:

MR. STEPHEN JONES
Jones, Williams, Bane & Klingenberg
Post Office Box 3339
Enid, Oklahoma 73701

Counsel for Petitioner.

.....
Marvin C. Emerson